

NEWSLETTER

JUNE, 2026



# Monthly Bulletin



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# DOING BUSINESS IN INDIA

We are pleased to share our e-book titled

***"Doing Business in India"***



Please scan the **QR code** above or **[Click Here](#)** to download the e-book. Alternatively, you may write to us at **[info@clasislaw.com](mailto:info@clasislaw.com)**

The book intends to give the readers an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.

# FEATURED ARTICLE



## THE 'EMPLOYER' UNDER THE POSH ACT: KERALA HIGH COURT CLARIFIES ICC JURISDICTION OVER SENIOR LEADERSHIP

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The Kerala High Court's decision in Prof. (Dr.) J. Sundaresan Pillai v. Internal Complaints Committee, IRTC & Others[1] provides important guidance on the interpretation of the term "employer" under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act"). The Court reaffirmed that designation alone is not determinative; rather, the analysis must focus on where ultimate management, supervision and control of the organisation actually reside.

The judgment addresses a recurring practical issue faced by organisations and Internal Complaints Committees that whether a complaint against a senior office-bearer, director, principal, chief executive or institutional head must automatically be referred to the Local Committee ("LC"), or whether the Internal Complaints Committee ("ICC"), may continue to exercise jurisdiction.

### Background

The appellant, Director of the Integrated Rural Technology Centre (IRTC), challenged the jurisdiction of the ICC of the organisation after a sexual harassment complaint was filed against him by a woman employee. He argued that he qualified as an "employer" under Section 2(g) of the POSH Act and, therefore, any complaint against him could only be investigated by the LC under Section 6(1). The Single Judge rejected the challenge and the matter was carried in appeal before the Division Bench of the Kerala High Court.

### Key Legal Issue

The central issue before the Court was whether the Director of IRTC was an "employer" within the meaning of Section 2(g) of the POSH Act or merely an "employee" under Section 2(f). The answer to this question would determine whether the complaint fell within the jurisdiction of the ICC or the LC.

### Court's Analysis

The Court examined the Memorandum of Association and governance framework of IRTC. While the Director was designated as the Chief Executive Officer and was responsible for the overall management of the institution, the governing documents demonstrated that the General Body and Executive Committee retained ultimate authority over the organisation. The Executive Committee appointed the Director, exercised disciplinary control over employees, managed institutional affairs and remained accountable to the General Body. The Director's powers were expressly subject to the supervision and control of these governing bodies.

# FEATURED ARTICLE

## Functional Test for Employer Status

The judgment adopts a functional and governance-based approach to determining employer status. The Court emphasised that the relevant inquiry is not whether an individual occupies a senior position, but whether that individual possesses ultimate authority over the management, supervision and control of the workplace. Where a person remains accountable to, and is supervised by, a governing board, executive committee or similar body, that person may continue to be treated as an employee for purposes of the POSH Act despite holding a senior managerial designation.

## Jurisdiction of the ICC

The Court reiterated the statutory framework that the complaints against employees are ordinarily investigated by the ICC constituted under Section 4 of the POSH Act. The LC assumes jurisdiction where an ICC has not been constituted or where the complaint is against the employer. Since the appellant was held to be an employee and not the employer, the ICC validly retained jurisdiction to inquire into the complaint.

## Practical Significance for Organisations

This decision has significant implications for employers, HR leaders, compliance professionals and ICC's. First, organisations should not assume that complaints against directors, chief executives, principals or other senior leaders must automatically be referred to the LC. Secondly, governance documents, delegation structures and reporting relationships will be critical in determining whether an individual qualifies as an employer under the POSH Act. Thirdly, organisations should periodically review their constitutional documents and POSH policies to ensure that the allocation of authority is clearly documented and aligned with statutory requirements.

## Key Takeaways

- Designation alone does not determine employer status under the POSH Act.
- Courts will examine governance structures and the location of ultimate managerial authority.
- Senior managerial personnel may still be treated as employees where they function under the control of a governing body and ICC retains jurisdiction over complaints against such personnel.
- LC jurisdiction remains confined to circumstances expressly contemplated under Section 6 of the POSH Act.

## Conclusion

The Kerala High Court's ruling provides valuable clarity on the distinction between 'employer' and 'employee' under the POSH Act. By focusing on substantive organisational control rather than formal titles, the Court has reinforced a practical and governance-oriented approach to jurisdictional questions under the Act. For corporate groups, educational institutions, non-profit organisations and other entities with layered governance structures, the decision serves as an important reminder that authority must be assessed in substance and not merely by designation.

### FOOTNOTES :

[1] (2026:KER:33013)

# LEGAL UPDATES

## SUPREME COURT:- INCORPORATION OF AN EARLIER AGREEMENT INCLUDES ITS ARBITRATION CLAUSE UNLESS EXCLUDED

### Introduction:

In a recent judgment[1], the Supreme Court of India has reaffirmed the principles governing incorporation of arbitration clauses by reference under Section 7(5) of the Arbitration and Conciliation Act, 1996. The Court held that where a subsequent agreement expressly incorporates all terms and conditions of an earlier agreement, the arbitration clause contained in the earlier agreement would be deemed incorporated, provided the contractual language demonstrates a clear intention to adopt the earlier agreement in its entirety. Setting aside the Bombay High Court's decision, the Supreme Court emphasized the distinction between a mere reference to a prior document and its complete incorporation into a later contract, thereby reinforcing the pro-arbitration approach adopted by Indian courts.

### Brief Facts of the Case

The appellant, Hirani Developers, entered into a development agreement dated December 20, 2011 with Nehru Nagar Samruddhi Co-operative Housing Society Limited for the redevelopment of a dilapidated housing project. The development agreement contained a dispute resolution clause providing for arbitration under the Arbitration and Conciliation Act, 1996. Subsequently, Hirani Developers executed a separate Permanent Alternate Accommodation Agreements ("PAA Agreements") with individual members of the Society, including the respondents. While these agreements did not contain an independent arbitration clause, they expressly provided that all terms and conditions of the Development Agreement would form part of, and be binding upon, the parties to the PAA Agreements.

Disputes subsequently arose between the developer and certain members of the Society, who initiated proceedings before the Consumer Disputes Redressal Commission under the Consumer Protection Act, 2019. In response, Hirani Developers invoked the arbitration clause contained in the Development Agreement and issued notices to the concerned members seeking appointment of an arbitrator. The members declined to participate in the arbitration proceedings, citing the pendency of the consumer complaints. Consequently, the developer approached the Bombay High Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator. The High Court rejected the applications, holding that the arbitration clause contained in the Development Agreement had not been validly incorporated into the PAA Agreements, leading to the present appeal before the Supreme Court.

# LEGAL UPDATES

## Analysis of the Supreme Court

The Supreme Court examined the scope of Section 7(5) of the Arbitration and Conciliation Act, 1996, which permits incorporation of an arbitration clause contained in another document where the reference is such as to make that clause part of the contract. Relying on its earlier decisions in *M.R. Engineers and Contractors Pvt. Ltd. v. Som Datt Builders Ltd.* [2] and *NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd.*[3], the Court reiterated that a distinction must be drawn between a mere reference to another document and incorporation of that document by reference. While a general reference would not suffice to import an arbitration clause, the clause would stand incorporated where the language of the subsequent agreement clearly demonstrates an intention to adopt the earlier agreement in its entirety.

Applying these principles, the Court held that Clause 14 of the PAA Agreements unequivocally stated that all terms and conditions of the Development Agreement would form part of the subsequent agreements and that all clauses thereof would be binding on the parties. Such language, according to the Court, reflected a clear intention to incorporate the Development Agreement in its entirety, including its arbitration clause. The Court therefore concluded that a valid arbitration agreement existed between the parties by incorporation and that the Bombay High Court had erred in holding otherwise. Accordingly, the impugned order was set aside and a sole arbitrator was appointed to adjudicate the disputes between the parties.

## Conclusion

The judgment reinforces the principle that the existence of an arbitration agreement must be determined from the parties' contractual intent rather than the mere form in which the arbitration clause appears. By holding that an arbitration clause can be validly incorporated through a subsequent agreement that expressly adopts all terms and conditions of an earlier contract, the Supreme Court has reaffirmed the pro-arbitration approach of Indian courts and provided greater certainty in the interpretation of Section 7(5) of the Arbitration and Conciliation Act, 1996.

### FOOTNOTES :

[1] *Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd. and another Etc.* (2026 INSC 484)

[2] (2009) 7 SCC 696

[3] (2024) 7 SCC 174

# COMPILED REGULATORY UPDATES

## **The Central Government enabled 100% Foreign Direct Investment in the Insurance Sector under the Automatic Route**

The Ministry of Finance, through the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2026 notified on May 02, 2026, has increased the foreign investment limit in the insurance sector from 74% to 100% under the automatic route. The amendment has been introduced pursuant to the Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Act, 2025 and aligns the foreign investment framework with the revised insurance law regime. The measure is expected to attract greater foreign capital, enhance competition, improve insurance penetration and support the growth of the insurance sector in India.

## **IBBI Amends Liquidation Regulations to Simplify MSME Valuation Process**

The Insolvency and Bankruptcy Board of India (IBBI) through Notification dated 19<sup>th</sup> May, 2026 notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Third Amendment) Regulations, 2026 to amend Regulation 35 of the Liquidation Process Regulations, 2016. The amendment introduces a special valuation framework for corporate debtors classified as Micro, Small and Medium Enterprises (MSMEs) under the MSME Act, 2006. Under the revised provision, the liquidator is required to appoint one registered valuer for each asset class of the corporate debtor. However, after consultation with the consultation committee and with recorded reasons, the liquidator may appoint two registered valuers where necessary. The amendment seeks to simplify and reduce the cost of liquidation proceedings for MSMEs while retaining flexibility in complex cases.

## **IFSCA Issues Revised Framework Governing Ship Leasing in IFSCs**

The International Financial Services Centres Authority ("**IFSCA**") through a circular dated 20<sup>th</sup> May updated the existing regulatory framework for ship leasing activities in International Financial Services Centres (IFSCs) in India. The circular classifies ship leasing as a financial product and permits operating lease, financial lease, and hybrid lease transactions involving ships, ocean vessels, engines, and related assets. The framework applies to Finance Companies or Finance Units registered in IFSCs and prescribes eligibility, registration, capital, governance, and reporting requirements. Eligible entities may be incorporated as companies, LLPs, trusts, or branches, with promoters located in FATF compliant jurisdictions. The framework also mandates compliance with AML/KYC guidelines, prudential regulations, foreign currency invoicing norms, maintenance of records, and periodic reporting to IFSCA. Additional restrictions apply to transfers involving Indian residents and utilization of office space or manpower within IFSCs.

# COMPILED REGULATORY UPDATES

## **MCA Clarifies Procedure for Transfer of Membership Interest in Companies without Share Capital**

The Ministry of Corporate Affairs (MCA) has clarified the procedure for transfer of interest of a member in a company not having share capital. MCA clarified that pursuant to Section 56 of the Companies Act, 2013, a proper instrument of transfer is required to be executed by or on behalf of the transferor and transferee and delivered to the company. Further, Rule 11(2) of the Companies (Share Capital and Debentures) Rules, 2014 provides that Form SH-4 shall also be used for transfer of interest of a member in a company not having share capital. Accordingly, stakeholders are advised to use Form SH-4 for transfer of interest of members in companies limited by guarantee.

## **MCA widens the ambit of Schedule VII for CSR Activities**

The Ministry of Corporate Affairs (MCA), through notification dated May 27, 2026, has widened the ambit of Schedule VII by introducing a new item no. (xiii), i.e., "Subscription to Zero Coupon Zero Principal Instruments on Social Stock Exchange." Further, in order to facilitate the implementation of CSR through Zero Coupon Zero Principal Instruments, amendments have been made to the Companies (Corporate Social Responsibility Policy) Rules, 2014, wherein the definitions of 'Not for Profit Organization' and 'Zero Coupon Zero Principal Instrument' have been introduced under Rule 2, and the criteria for Corporate Social Responsibility implementation through Zero Coupon Zero Principal Instruments have been enumerated under Rule 4A.

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# WORLD Environment Day

Observed annually on 5 June, **World Environment Day** is the United Nations' principal platform for encouraging environmental awareness and action. Established in 1972 during the Stockholm Conference on the Human Environment, the event has grown into the world's largest environmental outreach initiative, engaging governments, businesses, communities, and individuals across more than 150 countries.

**World Environment Day 2026** was hosted in Azerbaijan, marking another milestone in the event's journey of bringing environmental issues to the forefront of global policy discussions. The theme for this year, "**Climate Action**", underscores the urgent need to address climate change through collective efforts at the international, national, corporate, and individual levels. The choice of theme reflects a sobering reality. Rising global temperatures, more frequent extreme weather events, melting glaciers, biodiversity loss, and increasing pressure on natural resources are no longer distant warnings, they are present day challenges affecting economies, communities, and livelihoods worldwide. The 2026 focus on climate action signals a growing recognition that environmental sustainability is inseparable from economic resilience and long-term development.

**World Environment Day 2026** reminds us that the challenge is no longer one of awareness but of implementation. The future of climate action will depend not only on ambitious commitments but also on the everyday decisions that shape how we produce, consume, and coexist with the environment.

# Notable Recognitions & Accolades



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